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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

|                           |   |
|---------------------------|---|
| Proceeding                | 91179897  |
| Party                     | Plaintiff<br>Information Builders, Inc.   |
| Correspondence<br>Address | Howard F. Mandelbaum<br>Levine & Mandelbaum<br>222 Bloomingdale Road, Suite 203<br>White Plains, NY 10605<br>UNITED STATES<br>mail@levman.com |
| Submission                | Testimony For Plaintiff   |
| Filer's Name              | Howard F Mandelbaum   |
| Filer's e-mail            | mail@levman.com   |
| Signature                 | /Howard F Mandelbaum/   |
| Date                      | 12/11/2009  |
| Attachments               | Transcript for Filing.pdf ( 105 pages )(8447383 bytes )   |

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In the United States Patent and Trademark Office,  
Before the Trademark Trial and Appeal Board,  
INFORMATION BUILDERS, INC.,  
Opposer,  
- against -  
BRISTOL TECHNOLOGIES, INC.,  
Applicant.  
Opposition # 91179897

- - - - - x  
2 Penn Plaza  
New York, New York

November 13, 2009  
10:30 A.M.

EXAMINATION BEFORE TRIAL of INFORMATION  
BUILDERS, INC., a Plaintiff in the above-entitled  
action, by a Witness, GERALD D. COHEN, taken  
pursuant to Court Order, held before LEONORA L.  
WALKER, a Notary Public within and for the State  
of New York.

1 GERALD COHEN

2 A P P E A R A N C E S:

3  
4 LEVINE & MANDELBAUM

5 Attorneys for the Opposer:

6 INFORMATION BUILDERS, INC.

7 222 Bloomingdale Road - Suite 203

8 White Plains, New York 10605

9 BY: HOWARD F. MANDELBAUM, ESQ.

10  
11 ROGER BELFAY LAW FIRM

12 Attorney for the Applicant:

13 BRISTOL TECHNOLOGIES, INC.

14 829 Tuscarora Avenue

15 St. Paul, Minnesota 55102

16 BY: ROGER BELFAY, ESQ.

17 (Present via conference call)

GERALD COHEN

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND  
AGREED by and between counsel for the  
respective parties herein, that the  
filing and sealing be and the same are  
hereby waived.

IT IS FURTHER STIPULATED AND  
AGREED that all objections, except as  
to the form of the question, shall be  
reserved to the time of the trial.

IT IS FURTHER STIPULATED AND  
AGREED that the within deposition may  
be sworn to and signed before any  
officer authorized to administer an  
oath, with the same force and effect  
as if signed and sworn to before the  
Court.



1 GERALD COHEN

2 G E R A L D D. C O H E N, the witness herein,  
3 having first been duly sworn by a Notary  
4 Public for the State of New York was  
5 examined and testified as follows:  
6

7 DIRECT-EXAMINATION BY

8 MR. MANDELBAUM:

9 Q State your name and business  
10 address for the record, please.

11 A My name is Gerald Cohen. I'm the  
12 President of Information Builders, Inc. The  
13 address is 2 Penn Plaza, New York, New York 10121.

14 Q Mr. Cohen, how long have you been  
15 the President of Information Builders?

16 A Since its founding in 1975.

17 Q Were you one of the founders?

18 A Yes, I am.

19 Q How many founders were there?

20 A Three founders.

21 Q And for what purpose did you found  
22 the company?

23 A We are a software manufacturer, and  
24 Information Builders was founded to exploit the  
25 software products that we create.

1 GERALD COHEN

2 Q Can you tell us what products were  
3 initially produced that were <sup>developed</sup>sought by Information  
4 Builders, Inc.?

5 A The very first production was the  
6 product FOCUS, F-O-C-U-S, all caps, and then from  
7 that point on, FOCUS spawned a family of products  
8 under the FOCUS family name.

9 Q What was the function or purpose of  
10 FOCUS Software?

11 A Originally the FOCUS program -- in  
12 1975 there was one major computer, the IBM main  
13 frame computer. FOCUS was produced in those days  
14 to manage information and allow people to report  
15 information on a daily basis, and to run various  
16 applications using information that's stored on a  
17 computer.

18 MR. MANDELBAUM: I will ask the  
19 Reporter to mark Plaintiff's Exhibit 1,  
20 Wikipedia article FOCUS and this is  
21 <sup>alternately identified</sup>  
<sup>^</sup>registered as T2.

22 (Plaintiff's Exhibit 1, marked for  
23 identification.)

24 MR. BELFAY: This is from the  
25 Wikipedia Site?

1 GERALD COHEN

2 MR. MANDELBAUM: Correct.

3 Q Mr. Cohen, would you look at  
4 Exhibit 1; have you seen that before?

5 A I believe I once read it when it  
6 was originally put in for corrections.

7 Q Did you find it to be correct?

8 A Substantially correct.

9 MR. MANDELBAUM: I would move  
10 Exhibit 1 into evidence.

11 MR. MANDELBAUM: I will ask the  
12 Reporter to mark this as Exhibit 2, which  
13 is a <sup>Hoover's</sup> ~~Havering~~ Magazine profile of  
14 Information Builders, Inc. I think that  
15 is your T-1.

16 (Plaintiff's Exhibit 2, marked for  
17 identification.)

18 Q Are you familiar with Exhibit 2?

19 A Yes.

20 Q Can you describe briefly or tell us  
21 what the <sup>Hoover's</sup> ~~Havering~~ article is about?

22 A The <sup>Hoover's</sup> ~~Havering~~ article, this is just  
23 a quick summary of the company that people go to.  
24 <sup>Hoover</sup> ~~Havering~~-for one, talks about Information  
25 Builders, Inc., as a first line of information

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2 building, or IBI, as a sorting of information. It  
3 compares software firms, private firms in New York  
4 City and information about the company policy.

5 Q Is Information Builders, Inc. still  
6 a privately held company?

7 A Yes, it is.

8 Q Are you aware of any larger  
9 software company in New York, larger than  
10 Information Builders, Inc.?

11 A I think we are the largest private  
12 software company in New York City, but I don't  
13 know that for a fact.

14 Q Can you tell us roughly what the  
15 annual sales of the company are?

16 A They're in the neighborhood of \$300  
17 million dollars.

18 Q How much of that is ascribable to  
19 FOCUS, and the Focus Family of Products?

20 A FOCUS Product line or just software  
21 alone? FOCUS Family is about half, \$150 million,  
22 about half.

23 Q Over the recent years --

24 A It's been typical we also consult  
25 on FOCUS. That's another good part of it. The

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2 rest of the revenue is from consulting on FOCUS  
3 and other products. But from the software point  
4 of view, it's revenue is about half of the  
5 company's revenue.

6 MR. MANDELBAUM: I ask the Reporter  
7 to mark this as Exhibit 3, FOCUS manual  
8 which is, your T3, Mr. Belfay.

9 (Plaintiff's Exhibit 3, marked for  
10 identification.)

11 Q I hand you Exhibit 3, can you tell  
12 us what that is?

13 A This is the FOCUS user manual, one  
14 of the very early copies. When the product was  
15 not entirely language based. This is a  
16 description of the language.

17 Q And when was that -- when was that  
18 manual produced?

19 A This manual was produced, it says  
20 copyright 1975, Information Builders, Inc.

21 Q Is that when the company was  
22 started?

23 A Yes. It actual<sup>ly</sup> says -- well, it  
24 says copyright 1975 through -- there<sup>is a</sup> revision date  
25 April 1976 on it. It's a very early copy, the



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2 first manual of the product.

3 Q Is the product to which this manual  
4 applies still being sold by Information Builders,  
5 Inc.?

6 A Yes, it is.

7 Q Do you know how many computers  
8 today use that FOCUS software?

9 A FOCUS itself, it's probably a  
10 thousand or so computers. Including the various  
11 Focus products FOCUS family, I would probably say  
12 it's on five thousand computers; and miscellaneous  
13 FOCUS on probably a thousand computers also.

14 Q How many people would you say, to  
15 the best of your knowledge, use FOCUS software?

16 A Today?

17 Q Today.

18 A FOCUS software probably -- we use  
19 -- remember it's a software program, so you have  
20 people who write applications in it. There's  
21 thousands and thousands of people who get the  
22 results of the software program. That's probably,  
23 in the FOCUS world, tens of thousands of people  
24 who get the output of these programs.

25 MR. MANDELBAUM: Ms. Reporter, I

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ask you to mark Exhibits 4 and 5, which is  
your T4 and T5.

(Plaintiff's Exhibits 4 and 5,  
marked for identification.)

Q I hand you Exhibit 4, and I ask if  
this is a publication for Information Builders,  
Inc.?

A That's the Focus general  
information guide. I haven't seen this in a  
while. This is something from like 1989, and it's  
sort of a description of the various products as  
of 1989. It discusses the operating system we ran  
on. If you're running on M-V-VM-Deck<sup>DEC,</sup> UNIX, Wang,  
PCs, this is a description of the product and  
operating system.

Q FOCUS only run<sup>s</sup> on one system, or  
more than one?

A It could run on almost any  
operating system.

Q Does it run<sup>only on a</sup> on the main frame  
computer?

A No. It runs on all operating  
systems. It runs on Windows<sup>platforms</sup>, Player, - probably any  
operating system. Focus can run on the UNIX

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operating system, Linux Operating system, and all the others.

Q Let me hand you Exhibit 5. Can you also verify whether that's a publication of Information Builders, Inc.?

A This is what's called <sup>G</sup>general <sup>I</sup>information <sup>G</sup>guide. This was before the PC came in, when things were language based, before expanding to a GUI base. This is a <sup>G</sup>general <sup>I</sup>information <sup>Guide</sup>for Focus of 1984.

MR. MANDELBAUM: I'm going to ask the Reporter to mark this as Exhibit 6. That should be your T6.

For the record, I'm referring to a number that starts with "T". Those are temporary numbers that I used to give Mr. Belfay access to the exhibits, as he's not physically present. He's here by phone.

(Plaintiff's Exhibit 6, marked for identification.)

MR. BELFAY: I'm looking at T6 as we speak. And this particular document I'm looking at, much of the matter in the reproduction here is missing what looks



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like the last third of each page.

MR. MANDELBAUM: I'm sorry. If that's the case, it must have happened in the copying.

MR. BELFAY: The other ones have been fine so far.

MR. MANDELBAUM: I will get you a clean copy of this exhibit.

Q Mr. Cohen, do you recognize this article?

A This is an article about the company written in Software Magazine in February of 1990. It describes more about the company, it's that kind of article, but it does mention <sup>FOCUS</sup> it has been <sup>around</sup> satisfied for 15 years. FOCUS is forward thinking, in 1975 IBI produce<sup>d</sup> et cetera, et cetera, that sort of thing about the company. It's a piece that the magazine reporter wrote.

Q Are the contents of that article accurate?

A It was accurate as of the year that he wrote it, 1994.

Q 1994?

A Oh, excuse me. It's February 1990.

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2 Q Yes, okay.

3 A It's a 1990 article.

4 MR. MANDELBAUM: I ask the Reporter  
5 to mark Plaintiff's Exhibit 7.

6 (Plaintiff's Exhibit 7, marked for  
7 identification.)

8 Q I'm showing you IBI Micro Products  
9 Family?

10 A Okay.

11 Q Are you familiar with that booklet,  
12 first of all?

13 A Yes. I haven't seen it in a while,  
14 but I am familiar with this.

15 Q What is meant by Micro Product  
16 Family?

17 A In the early days there were many  
18 types of micro products. It wasn't a Microsoft  
19 and Apple. So we had a family of products, that  
20 which, we designated things like PC FOCUS PC FOCUS  
21 for DOS, we had PM FOCUS, which was for the DOS/2  
22 operating system. We had FOCUS EIS which was  
23 specific Executive Information Systems. We had  
24 various items that would be underlying. We had --  
25 in other words, some of these are run time, PC

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Focus run time facility, PC FOCUS and KB Focus, EIS for Windows. We have PM FOCUS, as I said. This was a quick summary of the various versions of the product that ran on the smaller micro IBI Family of Products. Micro product was still a reasonable descriptive term for the personal computer.

Q Micro Product is referring to the PC as the main frame used on leading computers?  
opposed to large

A Yes.

MR. MANDELBAUM: I would ask the Reporter to mark Exhibits 8, 9, 10, and 11. And that corresponds with your T 8, 9, 10, 11.

(Plaintiff's Exhibits 8, 9, 10, and 11, marked for identification.)

Q I show you, Mr. Cohen, what I believe is PC FOCUS one of the Focus Family products. Do you recognize this label that is Exhibit 8?

A Yes. That was the label we used for PC FOCUS.

Q This next exhibit, Exhibit 9, is a publication of Information Builders, Inc.?

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A This was the product fact sheet, PC FOCUS for Lan Pack (phonetic).

Q Do you know what the Lan Pack was?

A PC FOCUS had a Lan Pack product fact sheet.

Q Was that a product by Information Builders, Inc.?

A Yes.

Q Was that produced in the normal course of its business?

A Yes.

Q Let me show you Exhibit 10. Do you recognize Exhibit 10?

A Exhibit 10 is one of our early trademark applications for the term PC FOCUS.

Q You say application?

A This is the actual registration. This is registration number 1300245 for PC FOCUS.

Q And finally, Exhibit 11; -is-that the label<sup>ed</sup> for PC Weekly? Do you recognize that article?

A This is a magazine article about -- a reporter came out to talk to us about our version that we had in 1990, which came<sup>was</sup> a new

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2 version. It was the connection between the main  
3 frame with the PC. The date PC Weekly wrote this  
4 article, I'm not sure, but, this was about how to  
5 connect the PC main frame data, all platforms, to  
6 data on every operating system. We connected them  
7 from one operating system to the next. This was a  
8 guy writing an article about that in 1990.

9 MR. MANDELBAUM: At this time I  
10 would like to move into evidence Exhibits  
11 1 through 11. I'm asking the Reporter to  
12 mark Exhibits 12 through 14, which  
13 corresponds with your T12 through 14.

14 (Plaintiff's Exhibits 12 through  
15 14, marked for identification).

16 Q Mr. Cohen, can you tell me what  
17 Exhibit 12 is?

18 A Exhibit 12 is for the trademark PM  
19 FOCUS, and this is a shipping label that we use  
20 for PM FOCUS. This was in '92.

21 Q All right, then. Exhibit 13, is  
22 that a document that was prepared by Information  
23 Builders in the normal course of its business?

24 A Yes. This was a fact sheet for  
25 people buying PM FOCUS.

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Q Does that fact sheet indicate  
PM/FOCUS?

A Yes, it does.

Q I'm showing you Exhibit 14, can you  
tell us what that is?

A The United States registration and  
trademark office, for the trademark of PM slash  
FOCUS, on February 1994.

MR. MANDELBAUM: I move Exhibits 12  
through 14 into evidence.

I would ask the reporter to mark  
Exhibits 15 through 19, and that  
corresponds with your T15 through 19.

(Plaintiff's Exhibit 15 through 19,  
marked for identification.)

Q Looking at Exhibit 15, which is a  
label, which is T15, I would ask you to identify  
that?

A This is the label for the product  
called FOCUS 6.

MR. BELFAY: What was it, FOCUS  
6?

THE WITNESS: FOCUS 6 was created  
as the personal operating system started



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to move from DOS to Windows. It was an intermediate product. Microsoft was coming out with DOS 6, which was an interesting product, so we heard about DOS 6, and we came out with FOCUS 6 to be right up-to-date. This was a piece that was actually in 1997, so it's like the last DOS version as I recollect. And this FOCUS 6 had both Windows, as well as the DOS feature in it.

Q I hand you Exhibit 16, which is another label. This one, you have EIS Developer?

A Yes. This is Executive Information System. We would use FOCUS products to produce applications that were for Executive Information Systems, that is Dart Board. -- They had gravity. They had reports. There were ways to move around. So that the executive could very well look at various subject areas on a high level, get specific information from the information that was stored there. And so the piece talks about the FOCUS 6, it's EIS development kit, how you use FOCUS 6 and EIS together to develop applications.

MR. MANDELBAUM: Incidentally,

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Exhibit 16 corresponds with T16.

MR. BELFAY: I have it.

Q I'm going show you, Mr. Cohen,  
Plaintiff's Exhibit 18, which corresponds to your  
T19, Mr. Belfay. Mr. Cohen, if you can, can you  
identify that?

A This is a customer profile, and  
actually you have FOCUS 6/EIS and the description  
how the customer, Resource Net International or  
RNI used FOCUS EIS to solve a particular business  
problem. And it was described, as a customer's  
snapshot as it's called, how people are actually  
using FOCUS Signature.-Six EIS Edition.

Q Who produced the customer profile  
of Exhibit 18?

A We did. We write it, take  
photographs and the customer approves it. They  
make any necessary changes, if they want. When  
the profile is approved by the customer, then it  
goes to Information Builders, Inc. publicity  
department, and we get the customer's final  
approval before it goes out.

Q Is that document produced in the  
normal course of business of Information Builders,



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Inc.?

A Yes, it is.

Q I show you another customer profile which is Exhibit 17. That corresponds to T18. Was that document produced in Information Builders Inc.<sup>'s</sup> regular course of business?

A Yes. This is another FOCUS EIS snapshot about a company that's in the flower business. Actually, this one is a profile for a company in Europe for Almere Flower Auction (phonetic) a flower business in Holland. This company was auctioning off tulips, and this allowed the various bidders to get quick insight into what's happening during the bidding process. The So company was using the FOCUS EIS.

Q And I hand you Plaintiff's Exhibit 19, which corresponds with T17.

A This is later. This is 1998, and it's also a FOCUS<sup>profile</sup> label, FOCUS EIS. It's again a snapshot of the -- it's interesting. This is for the FOCUS 6 EIS. We were calling it EIS in '98. Now we're calling it just FOCUS slash EIS.

-Q- This is the development of the FOCUS/EIS Business. As an example, this is for

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the United States Postal Service, and it just gives you a description. This is a very large application they had. I don't remember exactly what, but it probably describes it. This was another success for FOCUS/EIS in 1998.

Q And Exhibit 19 was produced in the regular business of Information Builders, Inc.?

A Yes, it was produced by Information Builders, Inc. and approved by the customer.

MR. MANDELBAUM: I ask the Reporter to mark this next document as Plaintiff's Exhibit 20.

(Plaintiff's Exhibit 20, marked for identification.)

Q With respect to Exhibit 19, the customer profile for the United States Post Office, do you know when that document was produced?

A This document was produced in 1998.

Is  
Q ^-Was the Post Office still using FOCUS ?

A They're still very strongly using FOCUS in their data.

Q And what about in November 2009?

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2 A It's a very large application it  
3 uses.

4 Q I hand you what's been marked as  
5 Plaintiff's Exhibit 20 which corresponds with T20,  
6 and ask if you recognize that?

7 A This is United States Patent  
8 registration of a trademark page, PS/FOCUS, part  
9 of the family of FOCUS names as of that generation  
10 registered in  
that was marked March 1988.

11 MR. MANDELBAUM: I would ask the  
12 Reporter to mark this next document  
13 Plaintiff's Exhibit 21.

14 (Plaintiff's Exhibit 21, marked for  
15 identification.)

16 Q I hand you Exhibit 21 ,and ask if  
17 you recognize that?

18 A This is another U.S. Patent for  
19 Trademark registration for the trademark FOCUS  
20 registered in  
Vision and it was marked March 1998, Focus Vision.

21 Q Do you recall what FOCUS Vision  
22 was?

23 A FOCUS Vision was a -- we had in  
24 those days a means of -- it was very much more  
25 difficult to do images in those days. FOCUS



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2 Vision connected images to Focus products. In the  
3 earlier computer, in the early PC operating  
4 systems, in particular. But this was sort of our  
5 version of how you handle images in FOCUS.

6 MR. MANDELBAUM: I ask the Reporter  
7 to mark these as Exhibits 22 and 23. The  
8 documents correspond to T22 and T23.

9 (Plaintiff's Exhibits 22 and 23,  
10 marked for identification.)

11 Q Mr. Cohen, I hand you Exhibit 22,  
12 and I ask if you can identify that label for us?

13 A This is a label. That's FOCUS  
14 database server for DOS. Yes, this was a label  
15 that we used on what we call new business  
16 shipments at the warehouse. This was the label  
17 for the database servers where there were multiple  
18 computers. FOCUS could access their labels<sup>data</sup> on the  
19 database server.

20 Q Do you recall what type of computer  
21 this was ran on; was it DOS?

22 A It was probably for PC computers.

23 Q I hand you Exhibit 23, which  
24 conforms with T23; can you describe or can you  
25 tell us what that label is?

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A It's very much like other one.  
This is FOCUS for OS/2. There were two PC  
operating systems in those days; one was DOS, and  
one was OS/2. So we had a FOCUS server for each  
of these operating systems.

MR. MANDELBAUM: I'm going to ask  
the Reporter to mark these documents as  
Exhibits 24 through 27. And the documents  
are corresponding to temporary numbers T23  
through T27.

Before I ask the next question, I  
recall I wanted to ask you, Mr. Belfay, if  
you would stipulate waiving the  
certification and sealing the transcript  
before filing as we discussed off the  
record. I forgot to put it on the record  
before we commenced.

MR. BELFAY: We will stipulate we  
will waive the sealing of the records.

MR. MANDELBAUM: Thank you. And  
one more issue by order of housekeeping, I  
want to give the Reporter the copy of the  
Rules for the format of the transcript. I  
will provide her with a copy of that,

1 GERALD COHEN

2 Roger. This is just a document of the  
3 format, for the right page size, the print  
4 size, and the numbers.

5 MR. BELFAY: Okay.

6 Q Mr. Cohen, I'm going to hand you  
7 Exhibit 24, and ask you if you can identify that?

8 A Yes. This a shipping label for  
9 FOCUS for Windows. It was released 1.54 and  
10 updated. This was a label that we would apply  
11 when we ship media. This is when the PC was  
12 starting to use Windows, and FOCUS for Windows was  
13 our name, the name we were using for these  
14 products, the Windows products. And this is the  
15 label as of 1995.

16 Q When you say this is the label used  
17 to ship media, what do you mean?

18 A In those days the product was  
19 actually shipped in a box. You actually got it in  
20 a box. In fact by '95 we still probably had these  
21 little diskettes, so the media was actually ten  
22 diskettes in a box with a User Manual. This was  
23 the media package label and it also provides you  
24 with a "shipped on" date.

25 Q I hand you Exhibit 25. Can you

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first tell us, was that document produced by Information Builders, Inc., in its normal course of business?

A Yes. This is called FOCUS Windows Products

product. It's sort of a summary of that year of the various Windows products we had. We had a

FOCUS Reporter for the Windows, for FOCUS

Ad Hoc Option, FOCUS Professional, ad-hoc, Propositions - SGI^ for their Database Server

^database-server. And this is sort of a

description of publicity, some type of description for all of the various products.

Q I hand you Exhibit 26, another customer profile. Was that customer profile produced by Information Builders in the normal course of its business?

A Yes. This was a description of the people who were actually using FOCUS for Windows. This is a description -- this is a case for Emory Health Care, University of Emory Hospital. They had an application using FOCUS for Windows, and this is a description of it. And it was approved by the customer, the prescriber.

Q I hand you Exhibit 27, another customer profile. Can you tell us about that one,



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2 please?

3 A This one is FOCUS for Windows.  
4 Description also has EIS usage, and this is for  
5 Fleet Financial Group. It describes the  
6 application Fleet Financial Group uses for a  
7 application that they built, based on Executive  
8 Information System, that was FOCUS for Windows,  
9 the product. And Fleet had to approve it before  
10 we shipped it.

11 MR. MANDELBAUM: I ask the Reporter  
12 to mark this as Exhibit 28, which  
13 corresponds to T28.

14 (Plaintiff's Exhibit 28, marked for  
15 identification.)

16 Q Mr. Cohen, what can you tell us  
17 about Exhibit 28?

18 A Exhibit 28 it's U.S. Patent and  
19 Trademark Registration of April 1999<sup>6</sup> for the FOCUS  
20 Fusion, one or more of our products from the  
21 family<sup>of</sup> FOCUS products. Amongst our products we  
22 have Focus Fusion which was one of those extension  
23 products we had.

24 Q Was this the<sup>a</sup> registration that was  
25 applied for by Information Builders, Inc.?



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2 A Yes. This was approved and has a  
3 registration number 1965984.

4 MR. MANDELBAUM: I ask the Reporter  
5 to please mark Exhibits 29 and 30.

6 (Plaintiff's Exhibits 29 and 30,  
7 marked for identification.)

8 Q Mr. Cohen, I'm showing you Exhibit  
9 29, can you identify that?

10 A This is a U.S. Patent Trademark  
11 registration, February 1999, for the term FOCUS  
12 Forecasting.

13 Q This was issued to a Bernard Smith.  
14 What has that to do with Information Builders, if  
15 you know?

16 A This was a product that Mr. Smith  
17 had for -- he was in some type of forecasting  
18 business, and we licensed this trademark to him.  
19 We owned the trademark for Forecasting, and we  
20 issued a license to back to him. And he's  
21 publicly allowed to use the term FOCUS  
22 Forecasting. We issue licenses all the time, and  
23 we gave him a license.

24 Q Let me show you Exhibit 30?

25 A Okay. This one is another

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2 trademark for FOCUS Forecasting. And it's  
3 slightly different. My recollection is Mr. Smith  
4 wanted a slightly different description, and so  
5 this is the second trademark for FOCUS  
6 Forecasting, as of the same day, and it has two  
7 descriptions. Which I guess, he wanted to have in  
8 the licensing something very specifically  
9 mentioned that he can use computer programs  
10 regarding economical data and disks. And so one  
11 was Class 35 and one was Class 9. That's why.

12 Q Who owns these registrations?

13 A We do. That's owned by Information  
14 Builders, Inc.

15 MR. MANDELBAUM: I ask the Reporter  
16 to mark Exhibits 31 and 32. These  
17 correspond to T38 and T39.

18 (Plaintiff's Exhibit 31 and 32,  
19 marked for identification.)

20 Q Mr. Cohen, I show you Exhibit 31  
21 and ask if you can identify that?

22 A This is a label that's very recent.  
23 This is FOCUS for Main Frame. That is what the  
24 IBI system calls -- we tend to call the Main frame  
25 by IBM the Z/OS Operating System. Version 7.3, I

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2 believe is the recent version. This is again the  
3 shipping label for that system. And this is  
4 copyright 1975 to 2003. This was up to 2003.

5 Q Now I hand you Exhibit 32. Is that  
6 a document prepared by Information Builders, Inc.,  
7 in its normal course of business?

8 A Yes. This document is a data sheet  
9 describing what FOCUS for Main Frame consists of.  
10 It's a data sheet that describes it and it shows  
11 all the various features. It has versatility and  
12 it indicates why it's different from previous  
13 versions, and just facts that we put out to  
14 support the new shipment.

15 Q Version 7.3 has a copyright date up  
16 to 2003, Information Builders, Inc. <sup>is</sup> was<sup>^</sup> still  
17 producing this product?

18 A Yes, we are.

19 Q FOCUS for Main Frame?

20 A The current version is probably  
21 FOCUS 7.6, I believe. Actually FOCUS 7 is for  
22 FOCUS slash Z/OS because there are two versions of  
23 the operating system. IBM has a general  
24 processor, the ZIIP Chip, that's Z-I-I-P. FOCUS  
25 for Main Frame operates under the general

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2 processor chip and ZIIP Chip, so there are two  
3 computer processors which operates and processes  
4 information between the chips. We interact with  
5 the operating system to be controlled by the chip.  
6 It runs on that later version, FOCUS 7.6.

7 MR. MANDELBAUM: I'm going to ask  
8 the Reporter to mark Exhibits 33 through  
9 38, which corresponds to T31 through 37.  
10 Correction that's Exhibits 33 to 39.

11 (Plaintiff's Exhibits 33 through  
12 39, marked for identification.)

13 Q Mr. Cohen, I hand you Exhibit 33,  
14 and ask if you can identify that?

15 A This is a shipping label for a very  
16 early version of WebFOCUS. It's Web F-O-C-U-S,  
17 Focus all capitals, so that was the very first  
18 notice. It has the registration Trademark after  
19 it. It was a very early use of WebFOCUS in 1996  
20 for a  
or Graphical User Interface, GUI, for the  
21 operating system, which started to --

22 Q Is GUI an operating system?

23 A We have -- Windows is a viewing --  
24 a visual operating system. DOS is more of a  
25 language operating system. Windows is a visual

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operating system. WebFOCUS is one more product in that family name of FOCUS.

Q Is that G-U-I?

A Yes, GUI.

Q Graphical User Interface?

A Yes. Graphic User Interface.

Q What is WebFOCUS exactly?

A WebFOCUS is a Graphic User Interface. If you sit in front of WebFOCUS, which is the executive module user, where you never see any language. The user interacts via the standard GUI, using mouse clicks and pointer clicks and Icon menus and or pull-down boxes. And so, instead of typing the language, it's generated for the user automatically without language. GUI interfaces the back end, executes it as a language. All of this is converted to language on the back end and executes the software.

Q I show you Exhibit 34. Let me ask you, was that document prepared by Information Builders, Inc. in its normal course of business?

A This is one of the earlier WebFOCUS brochures, describing WebFOCUS Enterprise reporting and analysis. It's one of the early



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brochures about WebFOCUS working for HTML web standards, language front-end displays the language and describes various features of WebFOCUS on this new software.

Q Is there any significance to the type of print used for the WebFOCUS?

A Oh, yes. If you look at it "web" is lower case and Focus, is spelled out in all capitals, because that's the basic product of the Web Family, and WebFOCUS is much more emphasized.

Q I hand you Exhibit 35.

MR. MANDELBAUM: I think this  
corresponds with T number 35<sup>33</sup>, Mr. Belfay?

MR. BELFAY: Yes.

MR. MANDELBAUM: <sup>Exhibit</sup> T32- and ~35  
corresponds with T33?

MR. BELFAY: Thank you.

Q I show you Exhibit 35 now and ask you to identify that, Mr. Cohen?

A This is a picture of a CD. By this time all the media was shipped on a CD instead of little diskettes. And this is a picture of the CD  
for WebFOCUS, the development version of-421A60<sup>4.2.1 60 day</sup>,  
the trial version. This was the CD picture of

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2 that particular product.

3 Q Mr. Cohen, I hand you Exhibit 36,  
4 can you identify that?

5 A Exhibit 36 is a U.S. Patent  
6 Trademark Office Registration, dated June 1, 1999,  
7 for the trademark WebFOCUS.

8 Q And I hand you Exhibit 37; can you  
9 also identify that?

10 A This exhibit is a U.S. Patent  
11 office registration February 11, 2003. I guess it  
12 was renewing the trademark WebFOCUS which if you  
13 notice, is a much more broadened description. And  
14 so, now it's one or two line description. It's  
15 talking about much more computer software and  
16 various uses of the computer software.

17 Q Mr. Cohen, I hand you Exhibit 38,  
18 and ask are you familiar with that document?

19 A This is Computer Reseller News.  
20 This is a publication, and the publication is  
21 about moving into the electronic age. And the  
22 article is about Information Builders, Inc., and  
23 the new WebFOCUS Version 4 that we just had.  
24 That's the shipping CD cover for it. And it's a  
25 Reporter's description of us and the product; and

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2 talks about -- or reviews WebFOCUS Version 4 with  
3 hopes to accommodate the public with new products.

4 Q Do you recognize the gentleman in  
5 the picture on that?

6 A Yes. That's me. You know I'm  
7 amazed that even in a black and white picture, how  
8 white my beard was.

9 Q I hand you -- before I leave  
10 Exhibit 38, can you tell us whether the  
11 information in this exhibit is true and accurate  
12 to the best of your knowledge?

13 A Yes. This is a description by the  
14 reporter that we added before it was printed.

15 Q I hand you Exhibit 39, which  
16 corresponds to T37. Can you identify that? It's  
17 a two-sided page.

18 A This is dated July 2000. This was  
19 a magazine, DM Review. And it's a product review  
20 about -- actually this was a cover story. We were  
21 the cover issue of that edition. It was a product  
22 review about business intelligence that is  
23 <sup>enabling e-business</sup> ~~demandable business~~. It was a description of how  
24 the product is used for business intelligence. On  
25 the back, it actually talks about one of our



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2 clients, NASA, and how they're using the product.  
3 And NASA uses the software for the shuttle  
4 processing data and all the contractors use this  
5 system to collect and report on all of the quality  
6 and compliances that NASA uses for the shuttle.

7 MR. MANDELBAUM: I move into  
8 evidence Plaintiff's Exhibits 19 to 32.  
9 I'm going to ask the Reporter to mark  
10 Exhibits 40 through 47, and those  
11 correspond to T40 TO 47.

12 (Plaintiff's Exhibits 40 to 47,  
13 marked for identification.)

14 Q Mr. Cohen, we've been talking for a  
15 while about the various FOCUS Family of Products  
16 and how they're used. How do the users of your  
17 products learn how to the use them?

18 A Well, we have a series of education  
19 courses, run both on our premises and customer  
20 premises, and web-based courses where customers  
21 take the course at their own leisure and learning  
22 at their own pace via the internet.

23 Q I show you Exhibit 40; see if you  
24 can identify that.

25 A This is a calendar of FOCUS

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education courses from January to June. This is  
1984 and this is when we were actually printing  
out copies of the agenda. What do<sup>we</sup> call them now?  
Course catalogs. This is an actual course  
catalog.

Q Was that catalog produced by  
Information Builders, Inc. in the normal course of  
its business?

A Yes. This describes to all of our  
customers basically the FOCUS education curriculum  
for that year.

Q FOCUS Education, what does that  
mean?

A Well, this is a description of  
various courses. You have courses for basic  
application, special courses, courses for  
PC/FOCUS, courses for various operating systems,  
Main Frames. Webfocus Desk, FOCUS UNIX, FOCUS,  
different topics. For example, their top reporter  
prepared this for the managers, the file  
description and maintenance. FOCUS in the TSO/  
CMS Environment.

Q The rest are different operating  
systems?

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2 A Those are different software  
3 operating systems that we run on. And so these  
4 are the various FOCUS modifiers and technical  
5 modifiers for FOCUS and internal courses, and its  
6 station support, techniques. These are various  
7 courses. There are about 30 or so courses that we  
8 ran that year.

9 Q I hand you Exhibit 41, which  
10 corresponds to T41; you can identify that?

11 A This is the education calendar for  
12 1994, and it is, as you can see, FOCUS 6.8, and  
13 it's again -- this is the education curriculum and  
14 the calendar. As you open it, you see it has  
15 various subject matters, various different  
16 software, various operating systems. It describes  
17 in detail what the curriculum is, and how to go  
18 through the various courses. It describes where  
19 the courses are being held, what days, which  
20 cities, so on.

21 Q Are these the courses all under the  
22 direction of FOCUS?

23 A These are FOCUS products both for  
24 the PC, FOCUS Main Frame. Any kind of FOCUS  
25 product and so forth, for each kind of product.

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2 It's broken up into the kinds of courses depending  
3 on the version of FOCUS that you're using.

4 Q Let me hand you Exhibit 42,  
5 corresponding to T42. See if that's familiar to  
6 you.

7 A Well, every year we run a national  
8 conference for our customers. This is the list of  
9 people that attended in 1992. Name of the company  
10 and the actual name of the people who showed up  
11 for that conference. You get a customer who is  
12 using all of the various FOCUS products, that's in  
13 alphabetical order. It starts from A and goes to  
14 Z. And it just goes down. Again, it's for all  
15 people using the various FOCUS products.

16 Q I see. The title at the very top  
17 says "1992 National Fuse Conference". What is  
18 Fuse?

19 A Fuse is standard for FOCUS users.  
20 It's a -- Fuse is a conference for FOCUS users. I  
21 remember this was a user conference.

22 Q I hand you, Mr. Cohen, Exhibit 43.  
23 Can you tell me who produced that publication?

24 A This is a publication about FOCUS  
25 produced, usually twice a year by us. It's a

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2 magazine that we mail out to our customers, all of  
3 our FOCUS customers. It's called FOCUS News.

4 Q I would ask you to please look at  
5 Exhibit 44 and identify that?

6 A This is a publication about FOCUS  
7 System Journal. It's a magazine for employees and  
8 professionals as it says on the front cover. This  
9 is a technical magazine, developer of various  
10 software systems. And this one gives a general  
11 description of what's going on. This is more for  
12 a technical audience. That particular system goes  
13 toward, for instance, there is always a piece of  
14 art work on the front cover, an original piece of  
15 art work. Which would I believe there's only one  
16 other magazine that also has original art work on  
17 the cover, and that is the American Medical  
18 Association Journal. They have similar pieces of  
19 work on the front cover also.

20 Q Does Information Builders currently  
21 run courses for its FOCUS software?

22 A Yes. We have extensive education  
23 programs for all the FOCUS products.

24 Q I hand you Exhibit 45, which  
25 corresponds to T45, and I ask if you can identify



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that?

A This was the 2008 User Conference which was held in Nashville, Tennessee about a year ago. And you can see on page 27, for example, we have a whole section for FOCUS internals, FOCUS for SQL and Webfocus 7.7 products. There is a whole set. There was a whole track devoted to the FOCUS User. And you can see that, on page 25, you see the track Webfocus, best practices, and on page 23, we have WebFOCUS best practices, and the whole Family of Products are covered in that User meeting. It's called a submit now. We changed it to the Summit Conference.

Q And does the Summit still cover FOCUS?

A Yes, it does.

Q I hand you what was marked Exhibit 48. Mr. Cohen, I hand you Exhibit 48, and see if you recognize that.

A Yes. This was the summit conference of June 2009. And you can see the first page invites people. The inside advertisement says join us in Nashville, and it

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2 says very briefly (witness reading) Summit User  
3 Conference...learn innovative ways to seek  
4 immediate return your investments in WebFOCUS and  
5 other products. We mail this to about 80,000  
6 people.

7 Q I'm going to show you Exhibit 46  
8 which corresponds to T46. See if you recognize  
9 that one?

10 A This is the Summit Conference  
11 description for next year's conference, 2010,  
12 which is going to be in Florida. And it's  
13 announcement calling for the same description of  
14 where it's going to be held, for people to know in  
15 advance and it says clearly submit 2010, ,will be  
16 the opportunity for you to learn anything about  
17 our WebFOCUS and FOCUS and other products further  
18 in the future and discover the best practice ,et  
19 cetera. It's a promo for next year's 2010  
20 conference for these products.

21 Q Have you had summits every year  
22 since the company's inception?

23 A We probably have had up to about 25  
24 years, yes, of annual conferences.

25 Q For the past 25 years?

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2 A The past 25 years .

3 Q In North America?

4 A The past 25 years in North America.

5 Q Mr. Cohen, I hand you Exhibit 47,  
6 and see if you can relate that to Exhibit 46?

7 A Exhibit 47 is a page from a website  
8 describing the hands-on work shops for business  
9 users. And it is a series of local workshops that  
10 we run around the country. I believe this is the  
11 very current 2009 list. It's the last one between  
12 now and the end of December. And it's a  
13 description of the cities and the dates that these  
14 classrooms are run. It's a special seminar for  
15 hands-on workshops, see how Information Builders,  
16 Inc., WebFOCUS provide everyone, unites and  
17 organizes with the information they need. It's  
18 sort of a training and promotional set of  
19 conferences we run in cities like Cincinnati and  
20 Troy, Michigan; and Milwaukee, and Grove Hill.  
21 This is the Midwestern list, by the way. And they  
22 have a local one-day thing for the folks to come  
23 and see how WebFOCUS, in this case, works and try  
24 it out.

25 MR. MANDELBAUM: I'm going to ask

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2 the Reporter to mark Exhibits 49 through  
3 72.

4 (Plaintiff's Exhibits 49 through  
5 72, marked for identification.)

6 Q Mr. Cohen, does Information  
7 Builders, Inc., advertise FOCUS products?

8 A Yes, we do.

9 Q How long has Information Builders,  
10 Inc, been doing that?

11 A We've been doing that since the  
12 earlier years that we got into business, in the  
13 early '70s even.

14 Q What was the nature of advertising  
15 then?

16 A Oh, in the earlier years, when I  
17 first started, we had printed out advertisements  
18 in magazines predominately. It has changed over  
19 the years. As time went on advertisers weren't  
20 limited to just print advertisements. There were  
21 various kinds of media. A change of media.  
22 Advertising went to email blasts or analysts, or  
23 online magazine pages that were carrying various  
24 kinds of ads, or doing words for education,  
25 advertisers, budgets. The advertisers have grown

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2 to a greater extent to internet based advertising  
3 today.

4 Q Let me show you -- I have a number  
5 of advertisements. I would ask you to go through  
6 those, if you could, relatively quickly, Exhibits  
7 49 through 72. If you start with Exhibit 49, and  
8 tell me what that is.

9 A Exhibit 49 is a "Maximize your  
10 FOCUS usage". And it's an advertisement that  
11 talks about getting value for your FOCUS  
12 investment. And it's a pure FOCUS advertisement.

13 Q Is that something that Information  
14 Builders, Inc., produced?

15 A Well, it says on the bottom  
16 Information Builders, Inc., in the right-hand  
17 corner of the main text "come to maximize your  
18 FOCUS usage".

19 Q Okay. How about Exhibit 50, do you  
20 know what that is?

21 A Exhibit 50 is from a magazine -- I  
22 believe, Database Programming and Design. It's a  
23 magazine that was still -- actually, I think is  
24 still out possibly only for the technical people,  
25 DB/2 and FOCUS. This was a big article they wrote



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2 about us called DB/2 in FOCUS.

3 Q What is DDB/2?

4 A It's a database owned by IBM. One  
5 of the things we interface to and, since this is  
6 database program it's talking about how to  
7 interface. I would have to look at it though.

8 Q Did FOCUS work with other programs  
9 as well as by itself?

10 A FOCUS works with every other  
11 program on the market practically the whole  
12 interface. It can interface with everything you  
13 have.

14 Q Take a look at Exhibit 51, and tell  
15 me what that is.

16 A Exhibit 51 is Enterprise Computing  
17 Magazine. It's an article about <sup>Ford's</sup> forward^gains in  
18 FOCUS. Ford Motor Company is a customer of ours,  
19 and this was information actually, CMP, that wrote  
20 an article on FOCUS.

21 Q What about Exhibit 52?

22 A Exhibit 52 is a product review from  
23 Mid-range Systems Magazine. This is actually a  
24 newspaper owned by IBM. It goes out to all of  
25 their users. It's called Information Builders

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2 brings reporting creation into FOCUS. And this is  
3 just a nice description one of their reporters  
4 wrote about what we're doing with FOCUS as you see  
5 right there.

6 Q What is Exhibit 53, if you know?

7 A Exhibit 53 is another magazine  
8 article, a magazine called DEC Professional. DEC  
9 wrote an article about FOCUS shared imaging  
10 applications, ask to bring imaging sharing  
11 applications with each other on the VM version  
12 6.5. This is how we are working on that  
13 particular operating system.

14 Q You said a particular operating<sup>system</sup> is  
15 that DEC Corp, have its own operating system?

16 A Yes, they did.

17 Q And FOCUS ran on that the system?

18 A Yes, it did.

19 Q What is Exhibit 54?

20 A Exhibit 54 is a magazine article.  
21 DBMS. It's an interview with me. It's called  
22 "Corporate Processing Future of FOCUS" that's the  
23 title of the article. That is the interview that  
24 they did with me.

25 Q How about Exhibit 55?

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2 A 55, is Cranes Magazine, which is a  
3 business newspaper. That's known all around the  
4 country. As a matter of fact the software for the  
5 theater on Broadway. That article is about  
6 Information Builders publishing in cranes  
7 Magazine, that mentions -- I have to read most of  
8 it, but that article is about the company.

9 Q Do you recognize that picture?

10 A That was me before the beard. No,  
11 I have a beard in that picture. Post beard.

12 Q I show you Exhibit 56, can you tell  
13 us what that is?

14 A This is a publication actually  
15 called -- I'm not sure. I don't actually  
16 recognize this. It's sort of a -- I think it was  
17 a social -- it's an article about the Oklahoma  
18 Department of Human Services. It's something  
19 called McKinney (phonetic) Main Frame Solution  
20 Support systems. I think it was an in-house  
21 magazine called McKinney's. It's a whole article  
22 about how these public service Oklahoma is using  
23 FOCUS for. I'm sorry. It's in a Software  
24 Magazine. Yes, it's software -- wait a minute. I  
25 guess, oh, there it is. At the very bottom, Main

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2 Frame Executive. That's the magazine that was  
3 actually doing the article. You don't have the  
4 cover here. It's an article in Main Frame  
5 Executive Magazine about FOCUS.

6 Q What about Exhibit 57?

7 A This is a customer's story called  
8 FOCUS in Action. And the story is for U.S.  
9 Sprint. It's really about a customers usage story  
10 from Sprint.

11 Q And Exhibit 58?

12 A Exhibit No. 58 is a customer user  
13 story from one of the utilities. It's showing  
14 that it was a telephone company. This is one of  
15 the utility companies using FOCUS.

16 Q How about Exhibit 59?

17 A 59 is a showing FOCUS. This is  
18 Wayne County Criminal Justice using Webfocus  
19 Public such as the court system.

20 Q Is a customer profile produced in  
21 the normal cause of IBI's business?

22 A Yes. They are almost always  
23 approved by the customers before they're printed.

24 Q And Exhibit 60?

25 A This is about a freight liner using

1 GERALD COHEN

2 FOCUS, a heavy manufacturing company using FOCUS.

3 Q How about Exhibit 61?

4 A Exhibit 61 is a magazine article  
5 North American Freight. The reporter is showing  
6 how the transportation manufacturing industry is  
7 using <sup>FOCUS</sup> Webfocus.

8 Q Exhibit 62, what is that?

9 A Okay, 62 is a customer profile of  
10 Blue Cross Blue Shield. Showing how they use  
11 FOCUS 6 for fraud detection, an indication of how  
12 that effects cost in the health care industry.

13 Q And what is Exhibit 63?

14 A 63 is a customer story about a  
15 case, corporation or a manufacturer of  
16 agricultural construction equipment and they're  
17 giving examples of how FOCUS was used with their  
18 agricultural equipment business.

19 Q And Exhibit 64, can you identify  
20 that?

21 A Exhibit 64 is a customer story  
22 about a company called Stay Right. They're in the  
23 business of -- they build water systems, and their  
24 products -- this was a construction supply  
25 business.



1 GERALD COHEN

2 Q Take a look at Exhibit 65, and tell  
3 me if you recognize that?

4 A 65 is a customer story for the  
5 <sup>a</sup>Moritz. <sup>a</sup>Moritz is actually a research  
6 organization providing lots of customer  
7 information that they sell to customers. So this  
8 was in the research analyst industry.

9 Q In Exhibit 66, can you tell us what  
10 that is?

11 A Exhibit 66 is an article on FOCUS  
12 for Konka (phonetic). Konka is -- let's see, a  
13 imaging company and they're talking about how they  
14 used FOCUS. Actually this is not FOCUS. This is  
15 Executive FOCUS in the camera industry.

16 Q Please look at Exhibit 67, and tell  
17 us, if you can, what that is?

18 A Exhibit 67 is an article for Sun  
19 Micro Systems. And Sun Micro System produced  
20 UNIX. They have an application in their marketing  
21 department. I guess they were using FOCUS in  
22 their marketing department.

23 Q Do you know what UNIX is?

24 A UNIX is the name of an operating  
25 system.

1 GERALD COHEN

2 Q Does FOCUS run on UNIX?

3 A FOCUS runs on UNIX.

4 Q And Exhibit 68, what is that?

5 A Exhibit 68 is a Salt Union, which  
6 is the name of the company. The Salt Union was  
7 running FOCUS. Salt Union is a large supplier of  
8 salt, mostly I think, not the eating salt, but the  
9 salt you put on the roads. They're a supplier  
10 again, of transportation products you might argue,  
11 or construction products.

12 Q Did the Salt Union use FOCUS?

13 A That's what the article describes,  
14 they used FOCUS with the application that they  
15 have.

16 Q Please let us know what you know  
17 about Exhibit 69?

18 A Exhibit 69 is talking about the  
19 L.A. County Court System using FOCUS as part of  
20 the court system. It's a public sector area which  
21 uses FOCUS in the court systems.

22 Q How about Exhibit 70?

23 A This is a description of FOCUS  
24 being used by Sedgwick-James, Inc., which is an  
25 insurance brokerage or risk brokerage, and it's a

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description of how Sedgwick-James uses FOCUS for risk management of their customer claims.

Q And now you mentioned, you printed out advertisements and we talked about the customer profile. What print advertising are you referring to?

A If the magazine printed them, then we frequently try to place ads in magazines and they print out rather an ad. It would say this is a story, you get the same kind of exclusive as you would in a print magazine.

Q Other than that advertising that you pay for to third-parties, does Information Builders, Inc., have its own website?

A Yes. Our website has an extensive number of pages for each one of our products. All the important materials are there for customers who use it and what the products do.

Q I show you Exhibits 71, and refer you to Host-Based Reporting, what is Host-Based Reporting?

A This is a page from our current website. And on the current website, when you click on a product, there's a pull down box, and

1 GERALD COHEN

2 is a product called -- when you pull it down you  
3 see FOCUS, you click and go to a catch page for  
4 FOCUS. This talks about Host-based Reporting. It  
5 says The Corporate Standard for Enterprise  
6 Business Information Systems, and it describes the  
7 FOCUS product, in this case, on the main frame,  
8 for example. This is on the current website now.

9 Q Let me show you Exhibit 72, and see  
10 if you can tell us what that is?

11 A This is another one on our current  
12 webpage. Again if you go down to the product  
13 section and you take the FOCUS track, or use the  
14 family name of products, you come down to the  
15 description of new releases, the new programs,  
16 recent developments, and what the current message  
17 is for FOCUS, and various FOCUS products the  
18 customers can obtain. This is really the catch  
19 page which gets people's names and email  
20 addresses, if you download material about it.

21 MR. MANDELBAUM: I'm going to ask  
22 the Reporter to mark this as Exhibit 73.

23 (Plaintiff's Exhibit 73, marked for  
24 identification.)

25 Q Mr. Cohen, I hand you Exhibit 73,

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2 and see if you tell us what that is?

3 A Um -- this is -- we have a series  
4 of local user groups, user forums, and we have a  
5 series of pages on our website. It describes, for  
6 example, FOCUS Users of New England, which<sup>is</sup> called  
7 the FUN Group. This is a description of meeting  
8 them last month, October 16, 2009, and how they're  
9 FOCUS Users in New England. This describes the  
10 agenda and things that were welcomed to that  
11 meeting, et cetera. Let's see where it was. It's  
12 Hartford, Connecticut. Actually this was  
13 overnight. It's a two-day meeting. It was a  
14 large user meeting for the local users who wanted  
15 to get together.

16 Q Is there a user group in New York  
17 as well?

18 A Yes.

19 (Plaintiff's Exhibit 74, marked for  
20 identification.)

21 Q I show you Exhibit 74, can you tell  
22 us what that is?

23 A This is the New York user Forum for  
24 November 18. That's in a few days. And similarly  
25 with the previous group, it's about FOCUS the



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1  
2 website. One called, one of many things on the  
3 agenda that day. FOCUS in a WebFOCUS World,  
4 customer presentations, codes, application  
5 development, someone from Nature Bounty is talking  
6 to a number of consultants. It's actually the  
7 users who present what they were doing as a  
8 discussion with other users, and have a good time  
9 getting to know each other and talking about  
10 technical things.

11 MR. MANDELBAUM: I would ask the  
12 reporter to mark Plaintiff's Exhibit 75.)

13 (Plaintiff's Exhibit 75, marked for  
14 identification.)

15 Q I show you Exhibit 75, can you  
16 describe -- is that document produced by  
17 Information Builders, Inc.?

18 A Yes. This is a cover of a fact  
19 sheet called FOCUS for the ZIIP?

20 Q Did you say ZIIP?

21 A Yes, it stands for System Z  
22 Integrated Information Processor, and this is how  
23 we run on that ZIIP, or variations of Z/OS using  
24 what is called the ZIIP Chip. It's actually an  
25 operating system. This is, of course, if you are

1 GERALD COHEN

2 in fact running on a ZIIP engine.

3 Q Can Webfocus run on the ZIIP  
4 Engine?

5 A It is now.

6 Q Mr. Cohen, I show you a book with a  
7 <sup>25</sup> on the front and ask if you could tell us what  
8 that is?

9 MR. MANDELBAUM: I'm sorry, let me  
10 have the Reporter mark it first.

11 (Plaintiff's Exhibit 76, marked  
12 for identification.)

13 A Well, this is a Xerox copy of a  
14 booklet we put out in the year 2000. That was the  
15 25th anniversary. We published a little booklet  
16 about Information Builders 25 years in IT  
17 innovation. It's a history book about the history  
18 of Information Builders and it's various products.  
19 As you can see, it talks about the beginning, it  
20 talks about the FOCUS flagship product, which was  
21 the first product we had. As one goes through it,  
22 it talks about the various other products, and  
23 some of the family of products built around FOCUS.  
24 And it talks about a lot of people and customers,  
25 and a lot of photographs. And this is just sort

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of the 25th Anniversary memorial magazine you  
might say. A remembrance magazine.

Q All right. You mentioned this is a  
Xerox copy. We have the original, would you say  
that it's valuable to the company?

A Well, I do. I mean it's a  
keepsake.

Q The reason I ask about the  
original, and I understand it's a valuable book,  
but does that look like the contents of the  
original?

A Each page has been Xeroxed.

Q I direct your attention to page  
five of that exhibit. There is a picture, can you  
tell me who's in the picture?

A That's a picture of me and Rudy  
Giuliani who was then the Mayor of the City of New  
York.

Q What is the reason for that?

A He's presenting us with a  
Proclamation from the City, and to my recollection  
for 25 years of Software innovation. I visited  
him in his office.

Q Did Information Builders, Inc.,

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2 write the contents of this book?

3 A Yes.

4 Q Is the information true and  
5 accurate to the best of your recollection?

6 A Absolutely.

7 MR. BELFAY: This exhibit is a  
8 Xerox copy of the original?

9 MR. MANDELBAUM: Yes, and Mr. Cohen  
10 testified it's completely accurate.

11 MR. BELFAY: Okay.

12 MR. MANDELBAUM: May I go on,  
13 Roger?

14 MR. BELFAY: Yeah, go ahead.

15 MR. MANDELBAUM: I'm going to ask  
16 the Reporter to mark the next two numbers  
17 77 and 78, which correspond to T73 and  
18 T74.

19 (Plaintiff's Exhibit 77 and 78,  
20 marked for identification.)

21 MR. MANDELBAUM: Roger, Mr. Cohen  
22 has some concern about the identification  
23 of customers on some of these invoices.  
24 Do you have any problem with redacting the  
25 customers' names, if we just show the

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2 licenses were granted during the years and  
3 the dates on the invoices?

4 MR. BELFAY: No, I don't object to  
5 that.

6 MR. MANDELBAUM: What we'll do is  
7 black out the names before we serve the  
8 copies.

9 MR. BELFAY: That's fine.

10 Q Mr. Cohen, I hand you Exhibit 77,  
11 can you tell us what that is?

12 A It's an invoice to a company from  
13 -- it's a bunch of them. It's a series of  
14 invoices to companies for various subject  
15 licensing, FOCUS license agreement and maintenance  
16 for FOCUS, and a copy of -- actually, it's an  
17 invoice that went to different companies. These  
18 are the Xerox copies of these actual invoices.

19 Q Customers of Information Builders,  
20 Inc.?

21 A I have invoiced customers the  
22 original licenses of the invoice or subsequent  
23 maintenance invoice.

24 Q What period of time did that  
25 invoice cover?

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A These cover 1978 to 2000.

Q I'm going to show you Exhibit 78,  
and ask you to identify that?

A This is an invoice to a customer.

Q Again, there is more than one  
customer from 2007 to 2009; 2007, 2009, 2008 for  
FOCUS.

A One of them is for the Main Frame  
to customer. There are three invoices for FOCUS  
for 2007, 2008, 2009. There are different  
customers who owe money on the FOCUS, or are  
buying upgrades and new features.

Q During the last -- since 1975<sup>has</sup> that-  
Information Builders, Inc.<sup>been</sup> ~~^~~ Was shipping and  
invoicing for FOCUS software?

A <sup>Yes</sup> No<sup>^</sup> continuous shipping and  
invoicing.

Q Mr. Cohen, do you know how much  
money Information Builder's, Inc., spends to  
advertise its products?

A Annually the marketing budget,  
directly, runs about five to seven to eight  
million dollars a year.

Q Does that include FOCUS?



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A It does.

Q What percentage would you say is attributable to FOCUS or the FOCUS Family of Products?

A I would say the FOCUS Family of Product gets 75 percent of the budget.

MR. MANDELBAUM: I'm going to ask the Reporter to mark the next two exhibits as 79 and 80.

(Plaintiff's Exhibits 79 and 80, marked for identification.)

Q I show you Exhibits 79, can you identify that for us?

A This is U.S. Patent Trademark Registration Office, July 30, 1991 for the principal registration trademark FOCUS.

Q In Class 9?

A In Class 9, yes.

Q Does the registration mention the dates Webfocus was first Trademarked?

A The date used was 1975.

Q Is that correct?

A That's correct, absolutely.

Q And Exhibit 80, can you identify

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that?

A Exhibit 80 is a U.S. Patent and Trademark registration Office June 1, 1999 for the trademark WebFOCUS.

Q Thank you.

A That was first used in Commerce in 1996.

Q Is that correct to your knowledge?

A That is correct.

Q Now does Information Builders, Inc., take any action against anybody else using its trademark?

A We continually monitor the usage and or abuse of our trademark worldwide.

Q And does Information Builders Inc., take action against abusers of its registered trademark similar to FOCUS?

A Anything that brings infringement on our trademarks worldwide, we take action against.

MR. MANDELBAUM: I ask the Reporter to mark this as Exhibit 81.

(Plaintiff's Exhibit 81.)

Q Does Information Builders, Inc., I-^ ever

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commence oppositions like the ones against Bristol Webfocus, when it sees similar trademark infringement?

A When we become aware of another trademark that infringes us, we do take action.

Q Well, I hand you Exhibit 81, which I'll represent is a downloaded document of the names of companies Information Builders, Inc., has action against who have registered trademarks similar to FOCUS; do you recognize the names on that list?

A This is a very lengthy list of names, all of whom we have challenged, who was trying to use our mark or family -- one of our family of marks or the mark itself.

Q Do you know how many?

A Do you know them?

Q I'm not asking for a specific name, but just the number itself?

A I would say it's well over a hundred.

Q Would you be surprised to know it's more than a couple <sup>three</sup> hundred?  
^than a couple hundred?

A That many? It could be. It's

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doubled in size, but I would say it's a couple hundred.

Q Before oppositions are commenced do you put a would-be conflicter on notice before bringing an opposition proceeding?

A Yes, always.

MR. MANDELBAUM: I ask the Reporter to mark Exhibits 82 to 87.

(Plaintiff's Exhibits 82 through 87, marked for identification.)

Q I show Exhibit 82, can you tell us what that is?

A This is a letter from Allen Levine.

Q Who is Allen Levine?

A Allen Levine is the patent attorney, trademark attorney who handles our copyright activities, in the Law Firm Levine and Mandelbaum.

Q Do you know what Exhibit 82 is?

A It's a letter written on my behalf to somebody who was trying to get a copyright on a product that infringed on the mark.

Q You said copyright, do you mean the trademark?

1 GERALD COHEN

2 A I'm sorry, the trademark. This is  
3 someone trying to get a trademark on FOCUS  
4 software, FOCUS on the computer as their mark.

5 Q Did you authorize the sending of  
6 this letter?

7 A Yes. It went certified mail.

8 Q Let me show you Exhibit 83, can you  
9 tell us what that is?

10 A This is the response from the  
11 company that we had sent letters to, Adscope. We  
12 sent a letter to them within a short time, two or  
13 three months later, they had written back to  
14 confirm agreement and resolving the complaint, and  
15 they are -- let's see. They are stopping the use  
16 of that trademark and recalling<sup>all</sup> use of the  
17 word, the ill description or term FOCUS and set  
18 the date to do so.

19 Q Mr. Cohen, I show Exhibits 84 and  
20 85, can you tell us what those are?

21 A First, Exhibit 84 is a notification  
22 letter to a company called IIS, Limited, and it  
23 informs them we've been using the trademark FOCUS,  
24 WebFOCUS for many years. We think that their  
25 clients registration numbers is an infringement on

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2 our trademark, and we asked them to stop using  
3 this as their term FOCUS or WebFocus.

4 Q Did you authorize the sending of  
5 that letter?

6 A This went by registered mail, yes.

7 Q And what is Exhibit 85?

8 A Exhibit 85 is dated a month later,  
9 from IIS, the same company, and it says that they  
10 will discontinue use of the term WebFocus and  
11 begin removal of the name immediately, and it  
12 tells us when he's going to do so.

13 Q I show you some more letters,  
14 Exhibits 86 and 87. Can you please tell us  
15 whether you recognize any of that?

16 A Exhibit 86 is a letter that went to  
17 a company called Tel Nos, LLC. This is a letter  
18 to inform them of their trademark FOCUS and called  
19 their attention to the fact we owned the  
20 trademark, asking them to cease using the term  
21 FOCUS.

22 Q Did they cease using -- looking at  
23 Exhibit 87, if you will, what do you recognize  
24 that to be?

25 A Exhibit 87 is a letter written from



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2 them, approximately a month or so later, saying  
3 that they investigated the matter and they were  
4 asking the question which we required them or to  
5 our demand, for them to cease use of the term  
6 FOCUS immediately, and use a new name. They  
7 cannot use this name FOCUS, and they agreed that  
8 they will completely change over, you know, in a  
9 certain period of time.

10 Q I just want to recap the history of  
11 Information Builders, Inc. and FOCUS. When you  
12 started in <sup>1975</sup> 1975, where were your headquarters?  
13 Where were they located?

14 A We were at 104 West 31st Street and  
15 we had a thousand square feet.

16 Q How many employees did you have?

17 A We had about five employees.

18 Q And today where are you, and how  
19 much space do you have?

20 A Today we're at 2 Penn Plaza. We  
21 have about 125,000 square feet. In this building  
22 we have about seven to 800 employees.

23 Q Do you have any additional offices  
24 outside of this location?

25 A We have other locations throughout

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2 North America and Europe.

3 Q Do you recall what your sales were  
4 in the first year of inception?

5 A The very first year of inception,  
6 it was probably zero.

7 Q When you first started making  
8 sales, what were they?

9 A The first sales were probably in  
10 the neighborhood of one, two or \$300,000.

11 Q And now what are your total sales?

12 A Somewhere around \$300 million.

13 Q What would you say is your most  
14 important or most successful product?

15 A The FOCUS product, which is what  
16 we're known for. FOCUS is still a very widely  
17 well known product. It's seeded in many names in  
18 many organizations who are familiar with the FOCUS  
19 product and are very familiar with all the various  
20 other products in the FOCUS Family.

21 MR. MANDELBAUM: Just as a safety  
22 point, I move all exhibits that were  
23 identified into evidence. And I have no  
24 further questions. Mr. Belfay, you can  
25 cross-examine if you would like.

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2 CROSS-EXAMINATION BY

3 MR. BELFAY:

4 Q That's a good interesting story.  
5 Are you familiar with American Dream -- actually,  
6 I have just two questions. Way back on what I  
7 call T38 and T39, or Exhibits 31 and 32, that's  
8 the FOCUS Main Frame.

9 A Yes.

10 Q I want to clarify what you mean by  
11 that. What do you mean by the term Main Frame in  
12 this particular context?

13 A Well, in those years IBM was known  
14 for -- it was called a Main Frame computer. IBM  
15 liked that term, it was colloquy, everybody talked  
16 about that big huge machine that IBM had. That's  
17 a Main Frame. This was shorthand for referring to  
18 the IBM computer which was actually just a very  
19 big running machine using MV operating system or  
20 the VM operating system in those days.

21 Q I see. So in both cases you're  
22 really referring to products collaborated or run  
23 under the control of the operating system provided  
24 by IBM in some cases, or some other Main Frames  
25 manufacturers have similar relationships?

1 GERALD COHEN

2 A Yes, also software products. Other  
3 software called operating systems.

4 Q Later on, and pardon me, I have  
5 forgotten the number associated with it. You said  
6 there was -- I believe you said the term was a  
7 ZIIP Engine, the ZIIP Operating System under which  
8 your software generally runs?

9 A No. That's not an operating  
10 system. Actually it's a chip. You can have many  
11 operating systems under the ZIIP chip. It's the  
12 one and only machine that has more than one  
13 generally-processor chip. Every computer has some  
14 kind of processor chip, and this particular  
15 machine alternates. It has more than one chip.  
16 So we have the opportunity of switching back and  
17 forth, you know, actually controlling the  
18 processing operating system ourself by <sup>Switching</sup> which<sup>^</sup>from  
19 one chip to the next.

20 Q I see. But in that environment,  
21 your software still would not really be considered  
22 an operating system. You're actually  
23 collaborating with the operating systems to  
24 accomplish your functions?

25 A I would say that's true.

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2 Q Perhaps I missed it, but look for a  
3 couple spots that I missed it. You do not, as  
4 part of FOCUS Family -- withdrawn. You do not  
5 offer an operating system, a set of operating  
6 softwares for any Main Frame or PC or any other  
7 computer at this point; is that right?

8 A Yes, that's correct. We do not  
9 offer an operating system.

10 Q If I might ask, why is that?

11 A Well, the operating system it's  
12 just software that's a closer related program that  
13 runs it. But it's usually identified with a piece  
14 of hardware. And we're very much independent. We  
15 run on operating systems or hardware. Sometimes  
16 actually the ZIIP Chip we have, depends on the  
17 hardware that bounds us, and the operating system  
18 and the chip bind together.

19 Q And who provided the operating  
20 system part?

21 A That's the IBM operating system.

22 Q Thank you. Let's go to a different  
23 page, without going off into a tangent here. Go  
24 to what I call T79, T81, T83, which are letters to  
25 IBI's attorney recognizing that they probably

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2 should drop the use of FOCUS related trademark  
3 that they were using. Can you tell me what kind  
4 of products those companies were offering?

5 A Looking through these letters, the  
6 thing that comes to us, first, that the use of the  
7 term FOCUS somewhere in the mark is also applying  
8 in Category 9 which is also all the software  
9 categories. So in one case, with this case the  
10 guy actually used the term WebFOCUS in England.

11 Am I right about that? And he brought it to the  
12 United States or tried to. He was using services  
13 -- using the term in connection with services  
14 offered, but he was trying to get a trademark -- I  
15 don't get that. Was he actually using WebFOCUS?

16 Q If you know. If you don't know or  
17 recall, please don't guess.

18 A Okay. This guy was actually taking  
19 the word WebFOCUS directly, but he was trying to  
20 get it in the services area. Any way.

21 Q Well, going back to the question of  
22 interest, do you know what product, for example,  
23 IIS, what they were offering with in conjunction  
24 with this trademark? Do you recall the product?  
25 If you do, please tell us.



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2 A The company was Ad Scope, and the  
3 truth of the matter is -- oh, they were offering  
4 something like FOCUS Reports or FOCUS on Software,  
5 or FOCUS on the Computer or computer related  
6 titles. This was actually a series of  
7 publications, technical publications called FOCUS  
8 Reports and FOCUS on Software, and FOCUS on  
9 Computer, and they were in the Category 9 and we  
10 said, "Hey, if you use FOCUS on software in that  
11 the category, we think that's infringement on the  
12 term FOCUS", and that was just a magazine article.

13 Q So let me webfocus in on my  
14 question a little. To your knowledge, they were  
15 not offering any other operating system software;  
16 they were offering publication?

17 A In their publication and in that  
18 category, right.

19 Q Is it fair to say that what I call  
20 T79, T81 and T83, those potential conflictors in  
21 all three cases, none of them were offering  
22 operating system software?

23 A No. They were all offering, in  
24 this particular case, of the magazine FOCUS on  
25 Computer, we also have a publication and we use

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the name FOCUS on, or FOCUS in some category.

Q I understand that.

A The other two, I'm not a hundred percent sure what the business of the other two were. It looks like one directly used the word FOCUS. I think it was for service or they were offering consulting services, but we're not sure. The letter as this states, this guy takes the term WebFOCUS and very clearly was running his website services under the term. He was using the term WebFocus to provide services.

MR. MANDELBAUM: That was for consulting?

THE WITNESS: Probably.

Q Most likely.

A Yes.

Q I have a third question. Looking at the approximately 300 oppositions that have been through the United States Patent and Trademark Registration office, of all those, how many of those finally closed with a decision on its merits by the Trademark Trial Appeals Board? Do you know that offhand?

A I have to ask my attorney. Do you

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2 have that knowledge?

3 MR. MANDELBAUM: It's not my  
4 testimony he wants. Answer to what your  
5 knowledge of it is. If you don't know,  
6 just tell him you don't know.

7 THE WITNESS: I have tell you, in  
8 all of these cases the mark discontinued  
9 from the use of the term. How many of  
10 them were discontinued? In some cases  
11 there was legal action. In some cases it  
12 was a letter of notification, and in some  
13 cases it was the Trademark Patent Office  
14 themselves who sent notification.

15 Q Which is precisely why I asked.

16 A It's probably low.

17 Q Let me ask a different question.

18 It might be a little more in front of Mr.  
19 Mandelbaum's memory. In cases that were actually  
20 decided by the Appeals Board, have you ever lost  
21 any?

22 A We never lost a case. I don't  
23 think any of those letters, the 300 listed we won  
24 every one in some way.

25 Q Well, okay. Let me clarify that

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2 answer. That means that none were withdrawn in  
3 anticipation of a loss?

4 A Well, many were -- we don't know  
5 the motivation on it.

6 Q That's what I'm asking. Have you  
7 ever withdrawn the opposition in anticipation of a  
8 loss in front of the Appeals Board?

9 A I don't recollect a case -- you  
10 mean in the United States.

11 Q Let's keep it in the United States.

12 A Okay. In the United States I don't  
13 recollect a case that we've withdrew from.  
14 Normally it's one of four settlement situation;  
15 actually upon notification, they drop out because  
16 they realize, you know, that it's confusing for  
17 them also. Or we go to some degree of, you know,  
18 back and forth, or in some cases we licensed them,  
19 which is what we did for FOCUS Forecasting. The  
20 guy had some business built on forecasting. He  
21 wanted to use the word FOCUS in it, and we  
22 licensed him to use the term.

23 Q Great. In the number of cases, and  
24 I have reviewed the record, there is a number of  
25 cases where IBI has duly withdrawn opposition in

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2 pretty much most of the cases if not all; is that  
3 what you mean in regard to a settlement. Given  
4 the procedural nature of the opposition, do they  
5 reach an agreement?

6 A An agreement?

7 Q I'm sorry. You testified earlier

8 --

9 A The issue is that we don't agree.

10 Q I'm trying to establish a framework  
11 for myself. The question still remains, have you  
12 ever withdrawn an opposition in anticipation of a  
13 loss?

14 MR. BELFAY: Have we withdrawn  
15 opposition in anticipation of a loss?

16 A I have never seen any anywhere.

17 Q Okay.

18 A Even in other countries we had to  
19 litigate in.

20 MR. BELFAY: Then I guess I really  
21 don't have any more questions for Mr.  
22 Cohen. Thank you very much for the  
23 courtesy material ahead of time. It was  
24 very helpful.  
25

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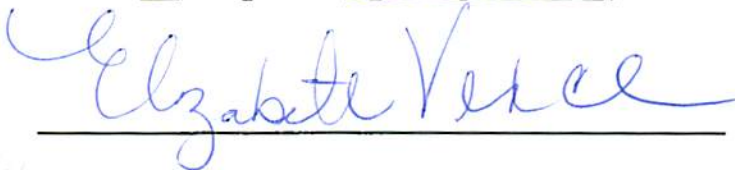
(TIME NOTED: 1:03 P.M.)



GERALD COHEN

Subscribed and sworn to before me

This 9<sup>th</sup> day of December, 2009.



NOTARY PUBLIC

--oo0oo--

**ELIZABETH VENCE**  
Notary Public, State of New York  
No. 01VE6034392  
Qualified in New York County  
Commission Expires Dec. 13, 2009



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C E R T I F I C A T E

STATE OF NEW YORK

COUNTY OF NASSAU

I, LEONORA L. WALKER, a Notary Public  
within and for the State of New York, do hereby  
certify:

That the witness, GERALD COHEN, whose  
deposition is hereinbefore set forth, was duly  
sworn by me and that such deposition is a true  
record of the testimony given by the witness  
and taken down by me.

That the adverse party appeared by its  
attorney, Roger Belfay, Esq., by telephone  
conference call.

That the deposition was commenced on  
November 13, 2009 at 10:30 a.m. at the offices  
of Information Builders, Inc., Two Penn Plaza,  
New York, NY 10121-2898.

I further certify that I am not



1 disqualified as specified in Rule 28 of the  
2 Federal Rules of Civil Procedure in that I am  
3 not any party's relative, employee or attorney,  
4 or related to or employed by any party's  
5 attorney, or financially interested in the  
6 action.

7  
8 IN WITNESS WHEREOF, I have hereunto set  
9 my hand this 13th day of November, 2009.

10  
11 Leonora L. Walker

12 LEONORA L. WALKER  
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**Testimony Deposition / Hearing Witness:**

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**Deposition Suites Located: Queens, Brooklyn, Bronx, Nassau, Staten Island**

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**CERTIFICATE OF SERVICE**

It is hereby certified that a copy of the foregoing transcript of the trial testimony of Gerald D. Cohen, including corrections by the witness, and Exhibits PX1-PX87 thereto, has been forwarded, this December 11, 2009 by first class (priority) mail to:

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